PUBLIC PROSECUTOR v. AZIZAN BIN SALLEH AND CONNECTED CASES

[R. Cr. J. (Ajaib Singh J.) June 24, 1983]

[Ipoh – Criminal Revision Nos. 14, 15 and 16 of 1982]

Criminal Law and Procedure – Appeal – Appeal against sentence – Notice of appeal did not specify whether appeal was to the extent of the sentence or as to legality of sentence – Criminal Procedure Code (F.M.S. Cap. 6), s. 305.

In these cases the accused had pleaded guilty and were fined by the learned Magistrate. The Deputy Public Prosecutor appealed against sentence in each case but the learned Magistrate rejected all three notices of appeal as he was of the view that the notices were not properly filed as they did not specify whether the appeal was as to the extent of the sentence or as to the legality of the sentence.

Held: (1) the notices of appeal in these cases were adequate for the purpose of bringing an appeal against sentence and the notices should therefore be accepted;

(2) in future all notices of appeal against sentence should follow the provisions of section 305 of the Criminal Procedure Code and specify exactly whether such appeal is as to the extent or legality of the sentence or both.

CRIMINAL REVISION.

Ajaib Singh J.: The accused in these three cases pleaded guilty and were fined by the learned Magistrate. The Deputy Public Prosecutor appealed against sentence in each case but the learned magistrate rejected all the three notices of appeal. The learned Magistrate has written a lengthy note giving his reasons for rejecting the notices of appeal but the ground on which he actually rejected the notices appears to be that the notices did not comply with section 305 of the Criminal Procedure Code which states that when an accused person has pleaded guilty and been convicted by a magistrate on such plea there shall be no appeal except as to the extent or legality of the sentence. The learned Magistrate was of the view that the notice of appeal in each case was not properly filed because it did not specify whether the appeal was as to the extent of the sentence or whether it was as to the legality of the sentence.

The learned Magistrate certainly has a point here because a specific reference in the notice of appeal either to the extent or to the legality of the sentence would not only go for clarity but also bring to the notice of the magistrate what would be required of him to state in his grounds of decision. The question now is whether the learned Magistrate was justified in rejecting the notices of appeal in the form in which they were filed.

It is a well established practice in such cases to merely state in the notice of appeal that the appeal is against sentence without mentioning whether it is as to the extent or legality of the sentence. There has been no difficulty over this practice and there is no valid reason to denounce this practice as unacceptable. It cannot be denied that a clear form of notice specifying exactly what is appealed against would be desirable but I am of the view that the omission to so specify and merely to say in the notice of appeal that it is against sentence does not make the notice invalid. Even the official forms of the notice of appeal which are provided by the prison authorities to prisoners serving terms of imprisonment do not prescribe anything more than that the appeal is against sentence. In my view a notice of appeal in such form is adequate for the purpose of bringing an appeal against sentence under section 305 of the Criminal Procedure Code and cannot be rejected by the court. In the circumstances therefore I direct that the three notices of appeal filed by the learned Deputy Public Prosecutor be accepted and acted upon under the Criminal Procedure Code.

I would however urge that henceforth all notices of appeal against sentence should follow the provisions of section 305 of the Criminal Procedure Code and specify exactly whether such appeal is as to the extent or legality of the sentence or both.

Order accordingly.

RODIAH BTE. IBRAHIM & ANOR. v. TEOH CHIANG MENG

[O.C.J. (Mohamed Dzaiddin J.) April 11, 20 & 26, 1984]

[Penang – Civil Suit No. 188 of 1983]

Damages – Hand – Right arm – Excessive soft tissue injury – Skin graft – Loss of promotional prospect – Loss of future earnings – Loss of pension – General damages for sum of $48,766 awarded with interest.

Tort – Negligence – Road accident – Injuries – Assessment of damages – Interest on damages.

The 1st and 2nd plaintiffs sued the defendant for damages for negligent driving of his motor-lorry. The defendant admitted liability, and consent judgment had been entered in favour of the 1st plaintiff. The case concerned the assessment of the quantum of damages for the 2nd plaintiff, an army corporal aged 33 at the time of trial. As a serviceman, he would retire at 40. He suffered injuries to his right arm. There was extensive soft tissue